

THOMAS E. WINNER
Nevada Bar No. 5168
ATKIN WINNER & SHERROD
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Attorneys for Defendant
National General Insurance Company

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EARNEST PLATT,
Plaintiff,

vs.

NATIONAL GENERAL INSURANCE
COMPANY, DOES I-X, and ROE
CORPORATIONS I-X, inclusive,
Defendants.

CASE NO.:
DEPT. NO.:

PETITION FOR REMOVAL

Defendant, NATIONAL GENERAL INSURANCE COMPANY, now petitions this Court for the removal of the above entitled case from the Eighth Judicial District Court of Clark County, Nevada, where it is now pending, to the United States District Court for the District of Nevada in Las Vegas pursuant to 28 U.S.C. Sections 1332 and 1441(a) *et seq.*

As part of this petition, Defendant/Petitioners shows the Court the following:

I.

Plaintiff commenced the above captioned matter in the Eighth Judicial District Court for the State of Nevada in and for the County of Clark as Case Number A-17-764747-C (Department XIV) on November 15, 2017.

II.

Plaintiff effectuated service of the Complaint onto the Nevada Division of Insurance on December 12, 2017. Defendant received a copy of said Complaint on December 12, 2017. A

1 copy of Plaintiff's Complaint setting forth the claims for relief upon which the action is based is
2 attached hereto along with the appropriate copies of process and by this reference made a part
3 hereof.

4 III.

5 The DOE Defendants in this action have not been identified. It is anticipated that DOE
6 Defendants, if later identified, will be residents of states other than Nevada, and that complete
7 diversity will be maintained.

8 IV.

9 This is a civil action for Breach of Contract, Breach of Covenant of Good Faith/Insurance
10 Bad Faith, violation of Unfair Claims Practices Act, and Negligent and/or Intentional
11 Misrepresentation stemming from a motor vehicle accident that occurred on November 12, 2014.
12 Plaintiff seeks recovery of compensatory damages, general damages including medical specials,
13 incidental damages, loss of earning and earning capacity, and exemplary or punitive damages.

14 V.

15 Plaintiff's insurance policies through the aforementioned Defendant had a policy limit of
16 \$250,000/\$500,000 in uninsured/underinsured coverage.

17 VI.

18 This Court has original jurisdiction under 28 U.S.C. Section 1332(a) based on diversity of
19 citizenship.

20 VII.

21 Upon information and belief, Plaintiff was at the time of the commencement of this
22 action and since that time, is an individual citizen, and resident of the State of Nevada.

23 VIII.

24 At the time of the commencement of this action and since that time, Defendant
25 NATIONAL GENERAL INSURANCE COMPANY, was/is incorporated in the State of North
26 Carolina with their principle place of business in the North Carolina.

27 IX.

1 Accordingly, none of the defendants are citizens of the State of Nevada, where this action
2 was brought.

3 X.

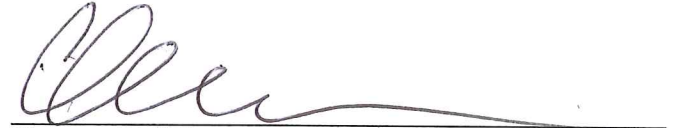
4 Defendant, NATIONAL GENERAL INSURANCE COMPANY, joins in and consents to
5 the removal of this action pursuant to 28 U.S.C. 1446(b)(2)(A).

6 XIII.

7 Plaintiff served the Complaint to the Nevada Division of Insurance on December 12,
8 2017. Defendant received the aforementioned Complaint on December 12, 2017, as supported by
9 the attached Proof of Service. As a result, this Petition for Removal is timely filed under 28
10 U.S.C. Section 1446(b).

11 DATED this 11 day of January, 2018.

13 ATKIN WINNER & SHERROD

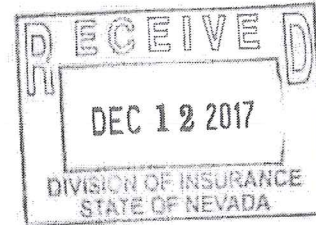
14 

15 Thomas E. Winner
16 Nevada Bar No. 5168
17 1117 South Rancho Drive
18 Las Vegas, Nevada 89102
19 Attorneys for Defendant
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EXHIBIT A

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11/15/2017 3:42 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson



COMP

BRYAN H. BLACKWELL, ESQ.

Nevada Bar No. 12558

RICHARD HARRIS LAW FIRM

801 South Fourth Street

Las Vegas, Nevada 89101

Phone: (702) 444-4444

Fax: (702) 444-4455

E-mail: bryan.blackwell@richardharrislaw.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

EARNEST PLATT,

Plaintiff,

vs.

NATIONAL GENERAL INSURANCE
COMPANY, DOES I - X, and ROE
CORPORATIONS I - X, inclusive,

Defendants.

CASE NO.: A-17-764747-C

DEPT. NO.: Department 14

COMPLAINT

PLAINTIFF'S COMPLAINT

Plaintiff, EARNEST PLATT by and through his attorneys, BRYAN H. BLACKWELL, ESQ, of the RICHARD HARRIS LAW FIRM and for his causes of action against Defendants, and each of them, hereby complaint and alleges as follows:

GENERAL ALLEGATIONS

1. That at all times relevant to these proceedings, Plaintiff, EARNEST PLATT, was and is a resident of Nebraska

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///



1 2. That Defendant NATIONAL GENERAL INSURANCE COMPANY,
2 (hereinafter "Defendant") was at all times mentioned herein, a corporation, doing business in
3 the State of Nevada.

5 3. That the true names and capacities of the Defendants designated herein as Doe
6 or Roe Corporations are presently unknown to Plaintiff at this time, who therefore sue said
7 Defendants by such fictitious names. When the true names and capacities of these defendants
8 are ascertained, Plaintiff will amend this Complaint accordingly.

9 4. That at all times pertinent, Defendants were agents, servants, employees or joint
10 venturers of every other Defendant herein, and at all times mentioned herein were acting
11 within the scope and course of said agency, employment, or joint venture, with knowledge and
12 permission and consent of all other named Defendants.

13 5. That Plaintiff EARNEST PLATT was the owner and operator of a 2013 GMC
14 SIERRA (the "Vehicle").

15 6. That on November 12, 2014, in Clark County, Nevada, Plaintiff was struck by a
16 third-party driver and sustained serious injuries while operating the Vehicle.

17 7. That as a direct and proximate result of the negligence of the third-party driver,
18 Plaintiff sustained bodily injuries all or some of which condition may be permanent and
19 disabling, and all to Plaintiff's damage in a sum in excess of \$15,000.

20 8. That as a direct and proximate result of the negligence of the third-party driver,
21 Plaintiff received medical and other treatment for the aforementioned injuries, and that said
22 services, care, and treatment are continuing and shall continue in the future, all to the damage
23 of Plaintiff.

24 9. That as a direct and proximate result of the negligence of the third-party driver,
25 Plaintiff has been required to, and has limited occupational and recreational activities, which
26 have caused and shall continue to cause Plaintiff loss of earning capacity, lost wages, physical
27 impairment, mental anguish, and loss of enjoyment of life, in a presently unascertainable
28 amount.



1 10. The third-party driver paid its represented insurance limits to Plaintiff.

2 11. That Plaintiff purchased an automobile insurance policy (the "Policy") policy
3 number 2002549387 from Defendant, which provided uninsured/underinsured motorist
4 insurance as well as medical payments coverage insurance to Plaintiff.

5 12. That following the accident with the third-party driver, and after determining
6 that the third-party driver had insufficient policy limits to cover Plaintiff's injuries, Plaintiff
7 demanded the uninsured/underinsured policy limit payment as well as the full amount of
8 Plaintiff's incurred medical specials from Defendant.

9 13. That Defendant refused to make adequate payment to Plaintiff as was required
10 under the Policy.

11 14. That Plaintiff has been required to engage the services of an attorney, and
12 accordingly, have incurred attorney's fees and costs to bring this action.

13 **FIRST CAUSE OF ACTION**

14 15. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through
15 14 as if fully set forth herein.

16 16. That Plaintiff and Defendant were bound by a contractual relationship pursuant
17 to the Policy.

18 17. That the actions of Defendant, as described herein, constituted a breach of
19 contract between itself and Plaintiff, and as a direct result thereof, Plaintiff has been damaged
20 in a sum in excess of \$15,000.00.

21 **SECOND CAUSE OF ACTION**

22 18. Plaintiffs repeat and re-alleges the allegations contained in Paragraphs 1 through
23 17 as if fully set forth herein.

24 19. Pursuant to the contractual arrangement between the parties, Defendant was
25 obligated to pay Plaintiff for damages received and medical expenses incurred as a result of
26 any accident with an underinsured motorist.

27 20. Retaining amounts it was required to pay pursuant to the contractual agreement
28

1 has unjustly enriched Defendant.

2 21. The actions of Defendant as described herein, constituted unjust enrichment at
3 Plaintiff's expense, and as a direct and proximate result thereof, Plaintiff has been damaged in
4 a sum in excess of \$15,000.00.

5
6 **WHEREFORE**, Plaintiffs, expressly reserving rights to amend this Complaint prior to
7 or at the time of trial of this action to insert those items of damage not yet fully ascertainable,
8 prays judgment against the Defendant, and each of them, as follows:

- 9 1. For general damages sustained by Plaintiff in an amount in excess of \$15,000;
10 2. For special damages sustained by Plaintiff in an amount in excess of \$15,000;
11 3. For reasonable attorney's fees and costs of suit;
12 4. Interest at the statutory rate;
13 5. For such other relief as the Court deems just and proper.

14 DATED THIS 15 day of November, 2017.

15 **RICHARD HARRIS LAW FIRM**

16 /s/ Bryan H. Blackwell

17
18 Bryan H. Blackwell, Esq.
19 Nevada Bar No. 12998
20 801 S. 4TH Street
21 Las Vegas, Nevada 89101
22 *Attorney for Plaintiff*
23
24
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EXHIBIT B

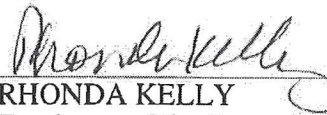
PROOF OF SERVICE

I hereby declare that on this day I served a copy of the Summons and Complaint upon the following defendant in the within matter, by shipping a copy thereof, via Certified mail, return receipt requested, to the following:

National General Insurance Company
Attn: Sally Hall, Claims Compliance Manager
P.O. Box 3199
Winston Salem, NC 27102-3199
CERTIFIED MAIL NO. 7016 3010 0000 0484 1911

I declare, under penalty of perjury, that the foregoing is true and correct.


DATED this 13th day of December, 2017.


RHONDA KELLY
Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

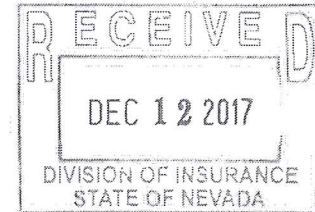
RE: Earnest Platt vs. National General Insurance Company, et al.
District Court, Clark County, Nevada
Case No. A-17-764747-C



State of Nevada, Division of Insurance
This document on which this certificate
is stamped is a full, true and correct
copy of the original

Date: 12/13/17 By: 

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SUMM

District Court
CLARK COUNTY, NEVADA

EARNEST PLATT,

CASE NO. A-17-764747-C
DEPT. NO. XIV

Plaintiff(s),

-VS-

NATIONAL GENERAL INSURANCE COMPANY,
DOES I - X, and ROE CORPORATIONS I - X,
inclusive,

SUMMONS
to National General Insurance Company

Defendant(s),

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

National General Insurance Company


1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:
 - (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
 - (b) Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint

Submitted by:

/s/ Travis H. Dunsmoor

TRAVIS H. DUNSMOOR, ESQ.
Nevada Bar No: 13111
RICHARD HARRIS LAW FIRM
801 South 4th Street
Las Vegas, NV 89101
702-444-4444
Attorneys for Plaintiff

STEVEN D. GRIERSON
CLERK OF COURT

By:  **Josefina San Juan**
DEPUTY CLERK
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

12/8/2017

Date

EXHIBIT C

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
EARNEST PLATT**DEFENDANTS**

NATIONAL GENERAL INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff clark
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant north carolina
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Travis Duns Moore, Richard Harris Law Firm, 801 South Fourth Street,
Las Vegas, Nevada 89101; (702) 444-4444

Attorneys (If Known)
Thomas E. Winner, Atkin Winner & Sherrod, 1117 South Rancho
Drive, Las Vegas, Nevada 89102; (702) 243-7000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Tort Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 490 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act		
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332 and 28 U.S.C. 1441

Brief description of cause:

Breach of Contract/Bad Faith

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____